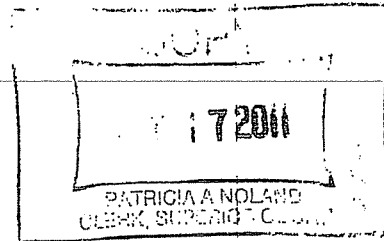


1 Thomas C. Horne
2 Attorney General
3 Firm No. 14000

4 Ann Hobart, No. 019129
5 Assistant Attorney General
6 Civil Rights Division
7 1275 West Washington Street
8 Phoenix, AZ 85007
9 Telephone: (602) 542-8608
10 CivilRights@azag.gov
11 Attorneys for Plaintiff



12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF PIMA**

14 THE STATE OF ARIZONA *ex rel.* TERRY
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 and

20 LISA D. PARRA, individually,

21 Intervenor-Plaintiff,

22 v.

23 COMMUNITY PROVIDER OF ENRICHMENT
24 SERVICES, INC., an Arizona corporation,

25 Defendant.

No. C20098389

[PROPOSED] CONSENT DECREE

(Assigned to Hon. Jan E. Kearney)

26 On October 23, 2009, Plaintiff the State of Arizona ("State") filed its Complaint in the
27 above-captioned lawsuit in the Superior Court of Arizona, Pima County, against Defendant
28 Community Provider of Enrichment Services, Inc. ("CPES"), alleging that Defendant

1 discriminated against Lisa D. Parra ("Parra") in violation of A.R.S. §§ 41-1463(B) & (F). On
2 June 15, 2010, Parra filed a Complaint in Intervention alleging Defendant violated A.R.S. §§
3 41-1463(B) & (F) and analogous federal statutes under Title I of the Americans with
4 Disabilities Act, 42 U.S.C. § 12101 *et seq.* CPES has denied and continues to deny the State's
5 and Parra's (when collectively, "Plaintiffs") allegations.

6 **COMPROMISE OF DISPUTED CLAIMS**

7 Plaintiffs and CPES desire to resolve the issues raised in the Complaint and Complaint
8 in Intervention (when collectively, "Complaints") to avoid the time, expense, and uncertainty
9 of further contested litigation. Plaintiffs and CPES expressly acknowledge that this Consent
10 Decree is the compromise of disputed claims, that CPES denies all the claims, and that there
11 has been no adjudication of any claim or finding of any liability on the part of CPES. CPES
12 and Plaintiffs agree to be bound by this Consent Decree and to not contest that it was validly
13 entered into in any subsequent proceeding to implement or enforce its terms. The parties
14 therefore have consented to its entry, waiving trial, findings of fact, and conclusions of law.

15 It appearing to the Court that entry of this Consent Decree will further the objectives of
16 the Arizona Civil Rights Act ("ACRA") and the Americans with Disabilities Act ("ADA")
17 and that its terms fully protect the parties and the public with respect to the matters within its
18 scope, **IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

19 **JURISDICTION**

20 1. This Court has jurisdiction over the subject matter of this action and over the parties,
21 and venue in Pima County is proper. The allegations of the Complaints, if proved, are
22 sufficient to state claims upon which relief could be granted against CPES under the ACRA and
23 the ADA.

24 **RESOLUTION OF THE LAWSUIT**

25 2. This Consent Decree, and a private Settlement Agreement between Parra and
26 CPES, resolve all issues set forth in the Complaints. Further, certain provisions of this
27 Consent Decree have been coordinated with the Consent Decree resolving the related action
28

1 (10-CV-592-TUC-DCB) filed against CPES by the Equal Employment Opportunity
2 Commission (EEOC) in United States District Court, District of Arizona, in Tucson (EEOC
3 Consent Decree).

4 **NO RETALIATION**

5 3. CPES will not retaliate against any person in any way for that person's opposition to
6 a practice made unlawful by the ACRA or the ADA, or for that person's participation in the
7 State's proceedings or litigation, and will make any future employment decisions concerning
8 parties and witnesses on a nondiscriminatory basis.

9 **ANTI-DISCRIMINATION POLICIES**

10 4. CPES agrees to comply fully with the provisions of the ACRA (A.R.S. § 14-1401
11 *et seq.*, as amended) and Title I of the ADA (42 U.S.C. § 12101 *et seq.*, as amended) and that all
12 CPES' employment practices, including CPES' hiring processes, and the terms, conditions and
13 privileges of employment by CPES, shall be conducted and maintained in a manner that does
14 not discriminate on the basis of race, national origin, color, disability, sex, religion, genetic
15 testing or age.

16 5. Within thirty (30) days of the entry of this Decree, CPES will revise the job
17 description for the position of Direct Support Provider to rescind the physical requirement that
18 the employee "[m]ust be. . . able to see and hear consumers in order to monitor consumer
19 activities" and replace it with a requirement that a Direct Support Provider must be able to
20 monitor consumer activities, with or without a reasonable accommodation. The revised job
21 description will reflect that an individual may qualify for the position if the individual is able to
22 "perform safely" the essential functions of the position with or without reasonable
23 accommodation. For purposes of this agreement, the term "perform safely" means to perform
24 without causing a direct threat to the health or safety of the individual or others that cannot be
25 eliminated by reasonable accommodation, as defined by 42 U.S.C. § 12111(b) and the
26 Commission's regulations found at 29 C.F.R. § 1630.2(r).

1 6. Within ninety (90) days of entry of this Consent Decree, CPES, with the
2 assistance of the consultant described in Paragraph 13.A of the EEOC Consent Decree, will
3 develop and implement a comprehensive policy setting forth procedures for processing
4 applications from individuals with disabilities. This policy will (a) comply with Sections 12
5 and 13 of the EEOC's "Enforcement Guidance: Reasonable Accommodation and Undue
6 Hardship Under the Americans with Disabilities Act,"
7 (<http://www.eeoc.gov/policy/docs/accommodation.html#reasonable>) and Chapters III-VIII of
8 the EEOC's Technical Assistance Manual; Title I of the ADA; (b) establish procedures for
9 promptly evaluating and approving requests for reasonable accommodation, including a
10 minimum of two levels of management review before any request for accommodation may be
11 denied; and (c) set forth disciplinary consequences for an employee's failure to comply with
12 the policy. Also within 30 days of the entry of this Consent Decree, CPES will prepare a
13 checklist for CPES personnel who receive employment applications from the public that
14 outlines procedures for processing such applications from individuals with disabilities that
15 comply with Sections 12 and 13 of the EEOC's "Enforcement Guidance: Reasonable
16 Accommodation and Undue Hardship Under the Americans with Disabilities Act,"
17 ("Reasonable Accommodation Enforcement Guidance"), which can be found at
18 <http://www.eeoc.gov/policy/docs/accommodation.html#reasonable>.

19 **TRAINING**

20 7. CPES will provide training regarding disability discrimination and the reasonable
21 accommodation of disabled persons according to the following terms:

- 22 A. Within ninety (90) days following entry of this Consent Decree, CPES will
23 provide a minimum of ninety (90) minutes of live training to all supervisory and
24 management employees at the level of Service Coordinator and higher, and all
25 employees involved in the hiring process, regarding the company's policies and
26 procedures that relate to the hiring, employment, and reasonable accommodation
27 of persons with disabilities. This information will include, but will not be
28 limited to, the policies described in Paragraphs 3 through 6 above; the

1 company's obligation to provide reasonable accommodations to disabled job
2 applicants, including deaf and hearing-impaired applicants; and examples of
3 common reasonable accommodations that can be provided in the workplace and
4 in the job application process, with an explanation that other possible reasonable
5 accommodations may be required. The training will include interactive
6 components. All new supervisory and management employees and all
7 previously-untrained employees involved in the hiring process will receive pre-
8 recorded training on these issues before such employees participate in the hiring
9 process. This training will be repeated live every twelve (12) months for the
10 duration of this decree.

11 B. Within sixty (60) days following entry of this decree and every six months
12 thereafter for the term of this Decree, CPES will provide a minimum of ten (10)
13 minutes in-service training during regularly scheduled staff meetings for all
14 Direct Support Providers and Support Supervisors regarding employment
15 discrimination issues, with a focus on CPES' commitment to providing
16 reasonable accommodations for employees with disabilities and explaining
17 CPES' policies and procedures for receiving and responding to requests for
18 accommodation.

19 C. All personnel who attend the training referenced in Paragraphs A and B above
20 will sign an attendance roster. The registry of attendance will be retained by
21 CPES for the duration of the Consent Decree.

22 D. During the length of the Consent Decree, Defendant will distribute to all
23 supervisory and management employees all policies and procedures developed
24 or modified pursuant to this Decree.

25 **MONITORING**

26 8. Within 180 days of the effective date of this Consent Decree, CPES will contract
27 with a protection and advocacy group for the deaf and hearing impaired to perform testing to
28 ascertain whether CPES employees charged with receiving employment applications from the

1 public are complying with CPES policies and training with regard to processing the
2 employment applications of persons who are deaf or hearing impaired in a manner that
3 complies with ADA requirements. The contract will provide for testing on three separate
4 occasions. The first instance of testing will occur after the training described above. The
5 second instance will occur no later than six months after the initial testing. After good faith
6 consultation with CPES, the EEOC and the ACRD will determine whether a third test is
7 necessary and when it will take place. The contract will provide that the testing agency will
8 provide the results of the testing to the ACRD at the same time that it provides the results to
9 CPES. If the testing agency identifies any deficiencies in CPES' ADA compliance during
10 testing, CPES will meet with the EEOC, the ACRD and a testing agency representative to
11 discuss such deficiencies and the means to correct them. CPES will pay any costs associated
12 with this testing.

13 **REPORTING**

14 9. CPES will provide in writing and in affidavit form to Assistant Attorney General Ann
15 Hobart, or her successor, at the Arizona Attorney General's Office, Civil Rights Division, 1275
16 W. Washington, Phoenix, Arizona 85007, within one hundred twenty (120) days after entry of
the Decree, the following:

17 A A statement that CPES has complied with in the requirements of Paragraphs 3
18 through 8 above, describing the manner and dates on which such compliance was
19 effected; and

20 B. Copies of all new or revised policies or procedures and of any training materials
21 created pursuant to Paragraphs 3 through 8 above.

22 10. For the duration of the Decree, every twelve (12) months after entry of the
23 Decree, CPES will report in writing and in affidavit form any changes, modifications,
24 revocations, or revisions to its policies and procedures that concern or affect the subject of
25 disability discrimination, reasonable accommodation, or retaliation.

26 11. Upon reasonable written notice to CPES, the ACRD may request and CPES will
27 provide documents and other information reasonably necessary to monitor compliance with this
28

Decree.

MODIFICATION

12. There will be no modification of this Consent Decree without the written consent of all the parties and the further order of this Court. In the event of a material change of circumstances, CPES, the State and Parra agree to make a good faith effort to resolve this matter. If the parties are unable to reach agreement, any party may ask the Court to make such modifications as are appropriate.

CONTINUING JURISDICTION OF THE COURT

13. The Court will retain jurisdiction over both the subject matter of this Consent Decree and the State, Parra and CPES for two (2) years from the date of its entry to effectuate and enforce it. The State and Parra may, for good cause shown, petition this Court for compliance with this Consent Decree at any time during the period that this Court maintains jurisdiction over this action. Should the Court determine that Defendant has not complied with its terms, appropriate relief, including extension of this Consent Decree for such period as may be necessary to remedy its non-compliance, may be ordered. In the event the parties have not stipulated and the court has not ordered an extension of this Consent Decree, the Consent Decree shall automatically expire and the Court shall lose jurisdiction over this action two (2) years after entry of the Consent Decree.

MONETARY RELIEF TO INTERVENOR-PLAINTIFF

14. Parra and CPES have entered into a private Settlement Agreement providing for monetary relief to Parra.

RELEASE

15. Except for the obligations of CPES that are expressly set forth in this Consent Decree, and in the private Settlement Agreement between CPES and Parra, CPES and its past, present, and future officers, employees, agents, affiliates, parents, successors and assigns are released from any and all civil liability to the Plaintiffs for the claims alleged in the Complaints.

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17. Plaintiffs and CPES represent that they have read this Consent Decree in its entirety and are satisfied that they understand and agree to all of its provisions, and represent that they have freely signed this Consent Decree without coercion.

19. Plaintiffs and CPES shall bear their respective attorneys' fees and costs incurred in this action up to the date of entry of this Consent Decree. In any action brought to assess or enforce Plaintiffs' or CPES' compliance with the terms of this Consent Decree, the Court may in its discretion award reasonable costs and attorneys' fees to the prevailing party.

20. The parties agree to the entry of this Consent Decree upon final approval by the Court. The effective date of this Consent Decree shall be the date that it is entered by this Court.

JAN E. KEARNEY

Honorable Jan E. Kearney
Superior Court of Arizona, Pima County

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CONSENT TO DECREE

1. On behalf of Defendant Community Provider of Enrichment Services, Inc., I acknowledge that I have read the foregoing Consent Decree, and that Defendant Community Provider of Enrichment Services, Inc. is aware of its right to a trial in this matter and has waived that right.

2. Defendant Community Provider of Enrichment Services, Inc. agrees to the jurisdiction of the Court, and consents to entry of this Consent Decree.

3. Defendant Community Provider of Enrichment Services, Inc. states that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce it to enter into this Consent Decree, that it has entered into this Consent Decree voluntarily.

4. I, LINDA L. MARIANO, am V.P. MANAGING DIRECTOR HR/ESOP and, as such, am authorized by Defendant Community Provider of Enrichment Services, Inc. to enter into this Consent Decree for Defendant Community Provider of Enrichment Services, Inc. and on its behalf.

5. I further state that Defendant Community Provider of Enrichment Services, Inc. has been represented by counsel in this case, and that the terms of this Consent Decree have been explained to me to my satisfaction, and are fully understood by me.

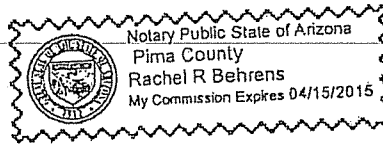
DATED this 11 day of October, 2011.

Community Provider of Enrichment Services,
Inc.

By 

Its V.P. MANAGING DIRECTOR
OF HR/ESOP

1 State of Arizona)
2 County of Pima) ss.
3



4 SUBSCRIBED AND SWORN to before me this 11th day of October, 2011,
5 by Rachel R Behrens
6

A handwritten signature in cursive script, appearing to read "Rachel R Behrens", written over a horizontal line.

7 My Commission Expires:

Notary Public

8 04/15/2015
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APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE

Attorney General

LEWS AND ROCA, LLP

By

Ann Hobart

Ann Hobart

Assistant Attorney General

By

Todd E. Hale

Attorneys for Defendant

Date

10/12/2011

Date

Awerkamp & Bonilla PLC

By

Don Awerkamp

Attorneys for Intervenor-Plaintiff

Date

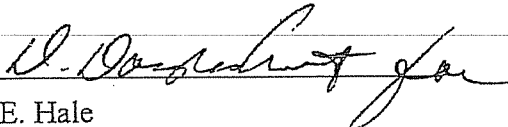
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APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE
Attorney General

LEWS AND ROCA, LLP

By _____
Ann Hobart
Assistant Attorney General

By 
Todd E. Hale
Attorneys for Defendant

Date _____

Date _____

Awerkamp & Bonilla PLC

By _____
Don Awerkamp
Attorneys for Intervenor-Plaintiff

Date _____

2282401

APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE
Attorney General

LEWS AND ROCA, LLP

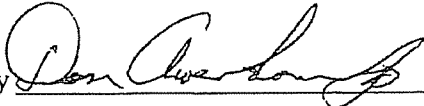
By _____
Ann Hobart
Assistant Attorney General

By _____
Todd E. Hale
Attorneys for Defendant

Date _____

Date _____

Awerkamp & Bonilla PLC

By 
Don Awerkamp
Attorneys for Intervenor-Plaintiff

Date October 12, 2011

2282401

LEWIS
AND
ROCA
LLP
LAWYERS

COPY of the foregoing
emailed this 18 day of
October, 2011, to:

Thomas C. Horne
The Attorney General
Ann Hobart
Assistant Attorney General
Civil Rights Division
1275 West Washington
Phoenix, Arizona 85007
Ann.Hobart@azag.gov
Attorneys for Plaintiff

Don Awerkamp
da@abdilaw.com
Ivelisse Bonilla
ib@abdilaw.com
The Law Office of Awerkamp & Bonilla, PLC
6891 North Oracle Road, Suite 155
Tucson, Arizona 85704-4287
Attorneys for Intervenor-Plaintiff

